

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5726

PETITION OF THE LUTHERAN CHURCH OF THE GOOD SHEPHERD

(Hearing held March 20, 2002)

OPINION OF THE BOARD

(Effective date of Opinion, April 26, 2002)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-E-2.81(a). The petitioner proposes to reconfigure the existing parking facility and seeks a variance of 14.20 feet as the existing gravel driveway is within 15.80 feet of the side lot line. The required side lot line setback is thirty (30) feet.

John Sekerak, Jr., Mark Hardcastle, Esquire, and Susan Mullineaux, architect, represented the Church at the public hearing.

The subject property is Parcel A, located at 4200 Olney-Laytonsville, Olney, Maryland, in the R-200 Zone (Tax Account No. 0801567305).

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to pave the existing gravel driveway located in the southern section of the property.
2. Mr. Sekerak testified that the parking for the property circles the Church as shown on Exhibit No. 8 (site plan). Mr. Sekerak testified that the petitioner proposes to remove the parking located in the southern section of the lot and pave this area. Mr. Sekerak testified that the footprint of the gravel driveway would not be increased or expanded.
3. Mr. Sekerak testified that the elimination of the parking in the southern section of the lot would permit the Church to maintain a circulation aisle that would provide emergency access to the site.
4. Mr. Sekerak testified that the Church would install landscaping, if required, to screen the driveway. Mr. Sekerak testified that he has spoken with the Church's neighbors and that the neighbors support the variance request. Letters of support were entered into the record as Exhibit Nos. 18(a) and (b).

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

An existing gravel driveway circles the property. The parking that is located in the southern section of the property will be removed and the area paved. The footprint of the gravel driveway would not be increased or expanded.

The Board finds that the approximate 30 year existence of the gravel driveway is an exceptional circumstance. The Board observes that this finding is consistent with the policy set forth in Courts and Judicial Proceedings Article, Section 5-114, which bars the government from proceeding against a structure, in violation of the setback restrictions, which has been in existence for more than 3 years.

- (b) *Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions*

The Board finds that the requested variance is the minimum reasonably necessary.

- (c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The variance request will continue the existing use of the property, which is compatible with the residential zoning of the area. The Board finds that the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties. Letters of support from the most impacted neighbors were entered into the record as Exhibit Nos. 18(a) and (b).

Accordingly, the requested variance of 14.20 feet from the required thirty (30) foot side lot line setback for the reconfiguration of the existing parking facility is granted subject to the following conditions:

1. The petitioner shall be bound by all of their testimony and exhibits of record, the testimony of their witnesses and representations of their attorney, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 8 and 10.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Allison Ishihara Fultz, seconded by Louise L. Mayer, with Donna L. Barron, and Angelo M. Caputo, in agreement, the Board adopted the following Resolution. Donald H. Spence, Jr., Chairman, was necessarily absent and did not participate in this Resolution.

Donna L. Barron
Vice Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 26th day of April, 2002

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County

Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.